IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

WP(C).No. 24258 of 2007(K)

PETITIONER:

J.PRABHAVATHIAMMA, D/O. JAGATHAMMA,
AGED 63 YEARS, SIVASAILAM, NEAR MANNADI
BHAGAVATHI TEMPLE, PALLITHANAM, KARAMANA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.SIRAJ KAROLY

RESPONDENTS:
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1. THE STATE OF KERALA, REP. BY
HOME SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR GENERAL OF POLICE,
POLICE HEADQUARTERS, THIRUVANANTHAPURAM.

3. THE SUPERINTENDENT OF POLICE,
CBCID, SIG.I, MUTTADA, THIRUVANANTHAPURAM-35.

4. THE DIRECTOR,
CENTRAL BUREAU OF INVESTIGATION (CBI),
NEW DELHI.

R1 to 3 BY DIRECTOR GENERAL OF PUBLIC
PROSECUTIONS SHRI P.G. THAMPI
R4 BY ADV. SRI.S.SREEKUMAR, SC FOR CBI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/09/2007, ALONG WITH CRL.R.P. NO. 2902 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 - TRUE COPY OF THE STATEMENT SHOWING THE DATE AND EVENTS.

EXT.P2 - TRUE COPY OF LETTER DATED 7.7.2007 ADDRESSED TO THE HOME MINISTER BY THE PUBLIC PROSECUTOR.

EXT.P3 - TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER DATED 30.5.2007

EXT.P4 - TRUE COPY OF RELEVANT PAGES OF KERALASABDAM WEEKLY DATED 5.8.2007.

EXT.P5 - TRUE COYP OF ANOTHER FEATURE WHICH WAS COME IN MALAYALAM WEEKLY DATED 20.7.2007.

RESPONDENTS' EXHIBITS: NIL.

(TRUE COPY)

VAA PS TO JUDGE

V. RAMKUMAR, J.

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W.P.C. NO. 24258 of 2007

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Dated: 13th day of September 2007

REFERENCE ORDER

The question which I propose to pose for the consideration and authoritative pronouncement by a Full Bench is whether the view taken by a learned Single Judge of this Court in **Vijayakumar v. Kamarudheen - 1999 (1) KLT 184** and by a Division Bench of this Court in **Antony Scaria v. State of Kerala - 2001 (2) KLT 93** that further investigation under Sec. 173 (8) Cr.P.C. can be conducted only by the very same agency which conducted the earlier investigation, reflects the correct legal position. With due respect to the learned judges, I am afraid that, in my humble view, the decision of the Apex Court in **Mariam Rasheeda v. State of Kerala, (1998) 1 KLT 835 (SC)** corresponding to **K. Chandrasekhar and Others v. State of Kerala and Others - AIR (1998) S.C. 2001**, which has been relied on by the learned judges, does not lay down any such proposition as aforesaid as I shall endeavour to show in the course of this reference order.

2. The petitioner, Prabhavathi Amma is the mother of one

Udayakumar who is said to have been brutally manhandled and killed while in police custody on 27-9-2005 by three police personnel attached to the Fort Police Station, Thiruvananthapuram. The said Udayakumar was allegedly tortured using iron rod, G.I. Pipe etc. and at 10.20 p.m. when he was removed to the Medical College Hospital from the Fort Police Station he was pronounced dead at 11.30 p.m. In this Writ Petition filed consequent on the important witnesses to the prosecution turning hostile during the trial of the case before the III Addl. Sessions Court (Fast Track - III), Thiruvananthapuram in S.C. 1542/06, the mother of deceased Udayakumar seeks a direction for further investigation by the Central Bureau of Investigation besides a direction to remove from service those police constables who turned hostile to the prosecution during trial and also a direction to the trial court to take action against them for perjury.

THE CHRONOLOGICAL EVENTS

3. A synoptic resume in chronological order of the facts leading to this Writ Petition is as follows:-

27-09-2005 :	Deceased Udayakumar along with C.W.1 (Suresh Kumar @ Mani) was taken into custody at 1.30 p.m. by accused Nos. 1 and 2 namely Jithakumar

and Sreekumar both of whom were police constables attached to the Fort Police Station , Thiruvananthapuram in the Crime Squad under C.W.23 (Circle Inspector, Fort Police Station)

From about 2 p.m. onwards C.W.1 and Udayakumar are said to have been brutally tortured by A1 to A3 all of whom were police constables attached to the Fort Police Station.

At 8 p.m. Crime No. 703 of 2005 was registered against Udayakumar and C.W.1 (Suresh Kumar @ Mani) under section 41 (1)(d) Cr.P.C.

At 10.20 p.m. on the same day Udayakumar was removed to the Medical College Hospital, Thiruvananthapuram from the cell of Fort Police Station.

At 11.30 p.m. Udayakumar was pronounced dead by the Doctor at the Medical College Hospital, Thiruvananthapurm.

Crime No. 704 of 2005 was registered by the Fort Police Station under the caption "unanatural death" under Sec. 174 Cr.P.C. with regard to the death of Udayakumar.

28-09-2005 : Investigation of Crime No. 704 of 2005 was entrusted with C.W. 49 (P. Prabha), Assistant Commissioner, Narcotic Cell, Thiruvananthapuram City.

30-09-2007 : A report was sent to J.F.C.M.-II, Thiruvananthapuram incorporating Sec. 302 read with Sec. 34 I.P.C. in the above crime.

02-10-2005 : CW 49 prepared the scene mahazar

03-10-2005 : Accused Nos. 1 and 2 who are police constables were arrested.

04-10-2005 : 3rd accused who is also a police constable in the Fort Police Station was arrested.

05-10-2005 : Investigation of the case was transferred to C.B.C.I.D.

13-02-2006 : Final report under Sec. 173 (2) Cr.P.C. was filed by C.W. 55 (K.B. Balachandran) Police Superintendent, C.B.C.I.D. (Special Investigation Group - I), Thiruvananthapuram before the J.F.C.M. - II, Thiruvananthapuram. As per the final report, the prosecution has proposed to examine 55 charge witnesses (CWs), 55 documents including prosecution sanction pertaining to the accused and 33 material objects. The final report is to the following effect:-

Accused Nos. 1 to 3 (Jithakumar, Sreekumar and Soman) were police constables working under C.W.23 (E.K. Sabu) Circle Inspector of Fort Police Station who was heading the Crime Squad constituted for apprehending culprits involved in theft cases. Deceased Udayakumar of Manakkad Village and his friend C.W.1 (Suresh Kumar) were detected by accused Nos. 1 and 2 at Sreekandeswaram Park in Vanchiyoor Village within the limits of the Fort Police Station on 27-9-2005. Since Sureshkumar was a person involved in theft cases and also since deceased Udayakumar was found having in his possession a sum of Rs. 4020/-. accused Nos. 1 and 2 suspecting that the money in the possession of deceased Udayakumar was stolen money, took Udayakumar and Suresh into custody at 1.30 p.m. and brought them to the Fort Police Station in an autorickshaw driven by C.W.4 (Shibu Kumar). They were then taken to the room in the office of C.W. 23 (E.K. Sabu) Circle Inspector of Police, Fort Police Station by about 2 p.m. C.W. 1 (Suresh Kumar) was beaten and fisted by accused Nos. 1 to 3 who thereby committed an offence punishable under Section 323 read with Sec. 34 I.P.C. Udayakumar was thereafter interrogated with regard to the possession of currency notes found on his person. He was subjected to brutal torture. In order to extort a confession from Udayakumar, accused Nos. 1 to 3,

in furtherance of the common intention to voluntarily cause grievous hurt to Udayakumar, subjected him to corporal torture which was forbidden by law. He was made to lie on his back on a bench and repeatedly bastinadoed on the soles of his feet with a cane. Thereafter a G.I. pipe was forcefully rolled down his thighs resulting in the crushing and separation of his thigh muscles and flesh and the accused have thereby committed an offence punishable under Sec. 331 read with Sec. 34 I.P.C. Since the aforesaid acts of cruelty were committed by the accused with the intention and knowledge that the said acts were likely to cause the death of Udayakumar and as a result of the inhuman atrocities meted out to him, Udayakumar suffered massive hemorrhage inside his heart and succumbed to the same at 11 . 30 p.m. from the Medical College Hospital, Thiruvananthapuram, the accused have thereby committed the offence of murder punishable under Sec. 302 read with Sec. 34 I.P.C.

27-10-2006 : Government of Kerala appointed Sri. K.K. Vijayan as the Special Public Prosecutor to conduct the prosecution in the case which by then stood, committed to the Sessions Court, Thiriuvananthapuram and made over to the Addl. Sessions Court (Fast Track - III) , Thiruvananthapuram.

25-11-2006 : The Special Public Prosecutor filed his memo of appearance before the trial court and the case was scheduled for examination of witnesses from 1-3-2007 onwards.

01-03-2007 : C.W.1 (Suresh Kumar) was absent and the case was adjourned to 2-3-2007.

02-03-2007 : C.W.1 was absent and his examination was adjourned to 12-3-2007

12-03-2007:	Case was re-scheduled for examination of the prosecution witnesses from 2-5-2007 onwards.
02-05-2007:	The case was again re-scheduled to 2-7-2007 due to the illness of the counsel appearing for the 3rd accused.
15-06-2007 :	Crime No. 703/ 2006 registered against the deceased and C.W.1 was referred by the Fort Police thereby indicating that a false case was registered against the deceased and C.W.1.
02-07-2007:	C.W.1 was again absent and warrant was issued for securing his presence and the case was adjourned to 3-7-2007.
03-07-2007:	C.W.1 who was arrested and produced before Court, was examined as P.W.1. He turned hostile to the prosecution. (The Special Public Prosecutor had filed a report before the trial Court to the effect that P.W.1 was won over by the accused police officers and requesting for further investigation).
04-07-2007 :	CWs 8, 9 and 12 examined as P.Ws 3 to 5
05-07-2007 :	CWs 14 and 10 examined as PWs 6 and 7
06-07-2007 :	CWs 26,29,30,13 examined as PWs 8 to 11. CW13 who was examined as P.W11 (Raveendran Nair) was the Crime Bureau S.I. of Fort Police Station at the relevant time. Eventhough there were documents in Crime No. 703 of 2005 to indicate that P.W 11 was the officer who recorded the arrest of the deceased and C.W.1 and that he had questioned the deceased this witness turned hostile to the prosecution by deposing that he did not record arrest and that it was A1 to A3 who arrested them and produced them before him.
07-07-2007:	CWs 37, 32 and 33 examined as PWs 12 to 14
09-07-2007:	CWs 23 and 48 examined as PWs 15 and 16

10-07-2007:	CWs 15, 17, 16, 51 and 19 examined as P.Ws 17 to 21
11-07-2007 :	CWs 21 and 22 examined as PWs 22 and 23
12-07-2007 :	CWs 31, 34, 35,36,24,25,27 and 28 examined as PWs 24 to 31
13-07-2007 :	CWs 38, 42 and 7 examined as PWs 32 to 34
18-07-2007 :	i) Crl.M.P. 1964/07 filed by the Special Public Prosecutor seeking permission to conduct further investigation in Crime Nos. 703/05 and 704 of 2005. ii) P.W.11 Raveendran Nair (CW13) was arrayed as A4 in the case by the trial Court which passed a separate order by invoking Sec. 319 Cr.P.C. iii) Further examination of witnesses stopped
24-07-2007:	i) Newly added A4 applied for time through his counsel ii) Crl.M.P. 1969/ 07 filed by Special Public Prosecutor heard by the trial judge iii) Report of Investigating officer seeking permission to conduct further investigation, filed
02-08-2007 :	Newly added A4 filed Crl.R.P. 2902/2007 challenging his arraignment as A4 by the trial court invoking Sec. 319 Cr.P.C. The challenge is that the answers given by the revision petitioner as a prosecution witness cannot be used against him for any purpose except for prosecuting him for perjury in view of Se. 132 of the Evidence Act as interpreted in **Gangadharan v. S.I. of Police- 1989 (2) KLT 448.**
08-08-2007:	The present Writ Petition was filed seeking the reliefs referred to above.

4. I heard Advocate Sri. Siraj Karoly, the learned counsel appearing for the Writ Petitioner, Advocate Sri.P.G. Thampi, the learned Director General of Prosecution, who is also the Public Prosecutor of the High Court, Advocate Sri. S. Sreekumar, the Standing counsel for C.B.I to whom notice was given and Advocate Sri. Ajakumar, the learned counsel appearing for the newly added A4 P.W.11).

STAND OF THE STATE GOVERNMENT

5. The stand of the State Government as voiced through the Director General of Prosecution is that in the light of the perfunctory investigation conducted in the case and the material eye witnesses and police officers exhibiting testimonial infidelity by turning hostile to the prosecution with a view to sabotage the prosecution and salvage the accused police personnel, this is pre-eminently a fit case which is to be entrusted with the C.B.I. for further investigation.

STAND OF ADDITIONAL A4

6. Advocate Sri. Ajakumar who has filed Crl.R.P. No. 2902 of 2007 before this Court challenging the arraignment by the trial court of P.w.11 (CW 13 - Crime Bureau Sub Inspector of Fort Police Station) as A4 in exercise of the powers under Sec. 319 Cr.P.C., made the

following submissions before me opposing this Writ Petition:-

The High Court can direct investigation by C.B.I. only if the material on record discloses a prima facie case calling for such investigation. The same cannot be done as a matter of routine or merely because a party makes some allegation to the effect that the investigation by the local police is unsatisfactory. The High court should record a prima facie finding as to the truth or otherwise of such allegations. **(Vide Secretary v. Sahngoo Ram Arya and another - 2002 (5) SCC 521).** There is no material produced to indicate that the investigation by the Crime Branch Police has been unsatisfactory. The only material produced are certain newspaper reports. Where the investigation has been conducted by the State police and a final report has been filed, it is impermissible for another agency like the C.B.I to conduct further investigation in view of the decision of the apex court in **Mariam Rasheeda v. State of Kerala – 1998 (1) KLT 835 (SC), Vijayakumar v. Kamarudhin – 1999 (1) KLT 184 and Antony Scaria v. State of Kerala - 2001 (2) KLT 93.** Even assuming that further investigation could be ordered to be conducted by the C.B.I and that too at the post cognizance stage, no such investigation can be ordered in a case like the present where the trial of the case is virtually over. Retraction by some of the

prosecution witnesses from their previous statement given to the investigating officer cannot by itself be a ground to order further investigation. Even the trial court at one stage did not entertain a petition filed by the Special Public Prosecutor seeking permission to conduct further investigation . It is too early to conclude that there is no sufficient material to convict the accused. The stand now taken by the State Government is on account of its vested interest to see that the trial of this case is postponed.

JUDICIAL EVALUATION

7. After hearing all concerned and perusing the records, I am, prima facie, of the view that there does not appear any good ground to refuse the prayer for further investigation made in this Writ Petition. This is a case in which even according to the final report filed by the Crime Branch Police, deceased Udayakumar was taken into custody by the accused Nos. 1 and 2 and brutally tortured by A1 to A3 while in police custody resulting in the death of Udayakumar as a result of police torture. The trial judge in her order dated 18-7-2007 while arraigning P.W.11 (CW13 - the Crime Bureau Sub Inspector, Fort Police Station) as A4 by resorting to the power under Sec. 319 Cr.P.C. had observed that even though the records would

reveal that it was P.W.11 who arrested the deceased and prepared the arrest memo and connected records, he was coming out with a totally different version when examined before court. P.Ws 3, 4, 11,21, 22 and 23 all of whom are police officers turned out to be cunning performers in the witness box by disowning their earlier statements made to the investigating officer. Much strain is not necessary to infer that this was part of an orchestrated attempt to salvage the accused persons who are police constables facing trial on a charge for offences punishable under Sections 323, 331 and 302 read with Sec. 34 I.P.C. The investigation by the Crime Branch Police will also show that certain important documents prepared at the time of taking Udayakumar into custody were withheld and the Special Public Prosecutor had to secure their production before Court for the purpose of confronting P.W.11, the Crime Bureau Sub Inspector, Fort Police Station.

8. Custodial torture of helpless and defenceless captives, detenues/arrestees by the custodians of law who turn out to be perpetrators of crime, is the most barbarous and savage degeneration of a civilized society. It is shocking to realise that police lock-ups in the country turn out to be death chambers. Custodial crimes is a species of man - made malady which is growing in alarming

proportions. By resorting to such excesses, the law enforcers are only creating a congenial atmosphere for fostering terrorism. No civilized society can afford to support this transformation of man into a beastly animal. Apart from the fact that the investigation has turned out to be a mockery with only perfunctory attempts to weave a seemingly plausible story of torture while in police custody, the trial in the case has revealed the calculated conspiracy by the police witnesses exhibiting no qualms in mortgaging their own conscience with a view to exculpate the members of their own breed and thereby jettison justice. Notwithstanding the emphatic direction by the apex Court in **Sube Singh v. State of Haryana - 2006 (2) SCC Crl. 54** that an independent investigating agency (preferably the respective Human Rights Commission or C.B.I) should be entrusted with the investigation of cases of custodial violence against police personnel, the facts of this case will reveal that the investigation was initially conducted by the local police and was subsequently entrusted with the Crime Branch Police (CBCID) which, going by the decision reported in **Antony Scaria v. State of Kerala** - **2001 (2) KLT 93,** is nothing but the same agency under the State Government. In the facts and circumstances of the case, I have no hesitation to hold that this is pre-eminently a fit case in which the investigation should have

been entrusted with the C.B.I. and it is not too late to handover the investigation to C.B.I. for the purpose of further investigation so that justice will not be a casualty.

WHETHER FURTHER INVESTIGATION CAN BE ORDERED DURING OR AFTER TRIAL

9. The argument that even if a case is made out for further investigation, the same cannot be ordered in the present case since cognizance of the offences have already been taken on the basis of the police report and even the trial conducted thereafter has reached its fag end, cannot hold good. It is now well settled that further investigation under Sec. 173 (8) Cr.P.C. can be conducted even at the post cognizance stage. This aspect of the matter will be adverted to later. If further investigation can be conducted even after cognizance has been taken, there is no reason why it cannot be ordered during or after trial. In **Gudalure M.J. Cherian v. Union of India - 1992 (1) SCC 397** the Apex Court directed the C.B.I. to take up the investigation of the case in **Gajraula Nun's rape case.** There the investigation was conducted by the State Police which had filed a charge-sheet also. in order to do justice between parties and to instill confidence in the public mind the Apex Court directed the C.B. I. to conduct the investigation. In **Kashmeri**

Devi v. Delhi Administration -1988 (supp.) SCC 482 on being convinced that the investigation by the Delhi Police against the accused police officers on a charge of murder by torture in police custody was partisan and was to shield th guilty policemen the Apex Court directed the trial court before which the charge-sheet had already been submitted, to exercise his powers under Sec. 173 (8) Cr.P.C. to direct the C.B.I. to conduct a proper investigation in the matter. In **Central Bureau of Investigation v. Rajesh Gandhi-1997 Crl.L.J. 63 (SC)** even though a final report was filed before the Chief Judl. Magistrate, Dhanbad, the Central Government issued a notification under Sec. 5 (1) read with Sec. 6 of the D.S.P.E. Act enabling the C.B.I. to conduct the investigation in the case. Though the action of the Central Government was successfully challenged before the Patna High Court, the Supreme Court taking note of the fact that the investigation by the local police was not satisfactory directed the C.B.I. to further investigate the offences in accordance with law. The power under Sec. 173 (8) Cr.P.C. was also taken note of by the Apex Court in that decision. Hence, I do not see any valid objection in the contention that no further investigation can be conducted after the commencement of the trial on the basis of the final report filed earlier under Sec. 173 (2) Cr.P.C.

WHETHER THE SAME AGENCY SHOULD CONDUCT FURTHER INVESTIGATION

10. I now proceed to consider the objection that further investigation, if at all found necessary, could be entrusted only with Crime Branch Police and not with the C.B.I. Sub Section (8) of Sec. 173 Cr.P.C. reads as follows:

> *"Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)".*

11. Thus, the power to conduct further investigation is really a prerogative of the police. After the decisions of the Apex Court in **State of Bihar and Anr. v. J.A.C. Suldanha and Other - 1980 (1) SCC 554, Union Public Service Commission v. Papaiah and Others - 1997 SCC Crl. 1112** etc.**,** the legal position is well settled that the power under Sec. 173 (8)Cr.P.C. can be exercised even at the post cognizance stage. In **Shaji v. State of Kerala - 2003 (2) KLT 929** a Division Bench of this Court after analysing the

legal position reiterated the same proposition. The Apex Court has further ruled that by resort to Sec. 173 (8) Cr.P.C., even the Court, in appropriate cases, can direct further investigation. **(See Sri. Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj v. State of A.P. - 1999 (5) SCC 740).** While the power to order police investigation under Sec. 156 (3) Cr.P.C. can be exercised only at the pre-cognizance stage and the power to direct investigation by the police under Sec. 202 (1) Cr.P.C. can be exercised only at the post-cognizance stage when the Magistrate in in seisin of the case **(Devarpalli Lakshminarayana Reddy v. Narayana Reddy - AIR 1976 SC 1672),** the power under Sec. 173 (8) Cr.P.C. to conduct or order further investigation can be exercised at any of the above stage subsequent to the filing of the final report under Section 173 (2) Cr.P.C.. In **Ram Lal Narang v. State (Delhi Administration - AIR 1979 SC 1971** the Supreme Court observed that where further investigation is conducted by the police it would be desirable that the police inform the court and seek formal permission in that behalf. This is not to say that the written permission of the court has to be obtained before conducting further investigation. When the power to conduct further investigation undoubtedly lies with the police, the purpose of

informing the court is only to ensure that the trial of the case is not proceeded with on the basis of the final report initially filed under Sec. 173 (2) Cr.P.C.

12. Section 173 (8) Cr.P.C. does not even remotely indicate that further investigation can be conducted only by the same agency which conducted the earlier investigation. All the decisions of this Court on which reliance is placed to contend for the position that further investigation can be conducted only by the same agency which conducted the original investigation, have in turn, relied on the decision of the Apex Court in **K. Chandrasekhar and Others v. State of Kerala and others - AIR 1998 S.C.2001** which corresponds to **Mariam Rasheeda v. State of Kerala 1998 (1) KLT 835 (SC).** In that case the Hon'ble Supreme Court was disposing of a batch of appeals by the 6 accused persons namely, Mariam Rasheeda and Fausia Hasan (two Mali Nationals), Nambi Narayanan and Sasi Kumar (two senior scientists working with the Indian Space Research Organization), S.K. Sharma (a labour Contractor) and K. Chandrasekhar (an authorised representative of a Russian firm in India). That case is popularly known as "the I.S.R.O. espionage case". A close reading of the judgment of the Supreme Court in the I.S.R.O. espionage case will show that the Government

of Kerala which had given consent under Section 6 of the Delhi Special Police Establishment Act, 1944 ("DSPE Act" for short) resulting in the C.B.I. investigating the case and filing the final report, thereafter withdraw the consent and ordered re-investigation by issuing a notification. Subsequently, the explanatory note to the said notification was amended to substitute the word "reinvestigation" with "further investigation". It was in that context that the Apex court in paragraph 25 of the decision considered the scope and ambit of "further investigation" occurring in Sec. 173 (8) Cr.P.C. It was accordingly held that further investigation was a continuation of the earlier investigation and not a "fresh investigation" or " re-investigation" or "denovo investigation" to be started ab initio wiping out the earlier investigation altogether. The Apex court also held that once the consent is granted under Section 6 of the DSPE Act an investigation undertaken by the C.B. I. pursuant to such consent is to be completed notwithstanding the withdrawal of the consent and that withdrawal of such consent by the State Government would not entitle the State Police to further investigate the case. In other words, what the Apex court held was that such further investigation could be conducted only by the C.B.I. which alone was granted consent under Sec. 6 of the D.S.P.E. Act. The

following observation in paragraph 25 of the judgment makes the position very clear:-

> *"Once it is accepted-and it has got to be accepted in view of the judgment in Kazi Lhendup Dorji (supra)- that an investigation undertaken by the C.B.I. pursuant to a consent granted under S. 6 of the Act is to be completed, notwithstanding withdrawal of the consent, and that "further investigation" is a continuation of such investigation which culminates in a further police report under sub-s. (8) of S. 173, it necessarily means that withdrawal of consent in the instant case would not entitle the State police, to further investigate into the case. To put it differently, if any further investigation is to be made it is the C.B.I. alone which can do so, for it was entrusted to investigate into the case by the State Government".*

As mentioned earlier, there is nothing in Sec. 173 (8) Cr.P.C. to indicate that further investigation can be conducted only by the same agency which conducted the earlier investigation. There is no observation by the Apex court in I.S.R.O. Espionage Case also to the effect that the very same agency which conducted the earlier investigation should conduct the further investigation. It was only because the C.B.I. was the agency which was given the consent to investigate the case by the State Government that the Supreme Court held that the C.B.I. itself should conduct the further investigation. Hence, with utmost respect to the learned Judges who decided **Vijayakumar's case - 1999 (1) KLT 184** and **Antony**

Scaria's case - 2001(2) KLT 93, I am of the considered opinion that there is no warrant for taking the view that further investigation under Sec. 173 (8) Cr.P.C. has to be conducted by the very same agency which conducted the earlier investigation. Judicial propriety demands that instead of straightaway taking this view, I should refer the matter for an authoritative pronouncement by a Full Bench for which purpose the files shall be placed before the Hon'ble the Chief Justice for orders. Since further delay in the matter may exacerbate the situation, the Registry of this Court may expedite the formalities in all earnestness.

V. RAMKUMAR,
(JUDGE)

ani.